

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Mark Kutney, AICP/(954) 797-1101

SUBJECT: Quasi Judicial Hearing: Variance
V 4-1-01 Anthony-Sylvan Pools/Adams, 13101 SW 16 Court/Generally
located on the north side of SW 16 Court 150 feet east of the corner of
SW 16 Court and SW 132 Avenue.

TITLE OF AGENDA ITEM: V 4-1-01 Anthony-Sylvan Pools, petitioner/Rich Adams,
owner (A-1)

REPORT IN BRIEF: The applicant is requesting a variance to reduce the required side yard setback in the A-1, Agricultural District from 25 to 21.5 feet in order to allow a pool to remain in the incorrect location in which it was constructed. The variance has been requested due to alleged contractor error in determining the correct setback prior to submitting a plan, and subsequently failing to correct the error once it was found during the permitting process. The intent of the required setbacks is to keep accessory structures greater than 150 square feet and pools out of required side yards so that they are not visible from the street, and to provide adequate separation from adjacent properties. Staff finds that there are no special circumstances that apply to this property, as the pool can be constructed to comply with all applicable setback requirements.

The Engineering Division has investigated the flooding issue and recommends a one (1) foot berm along the entire western boundary of the subject site.

PREVIOUS ACTIONS: Town Council tabled the request from the June 20, 2001 to the July 3, 2001 meeting to have the Engineering Division investigate a flooding issue (Motion carried 5-0).

Town Council tabled the request from the July 3, 2001 to the July 18, 2001 meeting because the applicant was not present at the July 3, 2001 meeting (Motion carried 5-0).

Town Council tabled the request from the July 18, 2001 to the August 1, 2001 meeting at the request of the applicant (Motion carried 5-0).

CONCURRENCES: The Planning and Zoning Board recommended denial of the request at its June 13, 2001 meeting (Motion carried 5-0).

FISCAL IMPACT: None

RECOMMENDATION(S): Motion to deny

Attachment(s): Justification letter, Survey, Land use map, Subject site map, Aerial

Application #: V 4-1-01

Revisions:

Exhibit "A"

Original Report Date: 7/26/01

**TOWN OF DAVIE
Development Services Department
Planning & Zoning Division Staff
Report and Recommendation**

APPLICANT INFORMATION

Owner :

Name: Rich Adams
Address: 13101 SW 16 Court
City: Davie, FL 33325
Phone: (954)424-4434

Petitioner:

Name: Anthony-Sylvan Pools Corp.
Address: 17049 Pines Boulevard
City: Pembroke Pines, FL 33027
Phone: (954)538-0082

BACKGROUND INFORMATION

Date of Notification: June 6, 2001 **Number of Notifications:** 35

Application History: No deferrals have been requested.

Application Request: One (1) variance **FROM:** Section 12-81A of the Land Development Code, which requires a minimum side yard setback of 25 feet within the A-1, Agricultural District; **TO:** reduce the required side yard setback from 25 feet to 21.5 feet.

Address/Location: 13101 SW 16 Court/Generally located on the north side of SW 16 Court 150 feet east of the corner of SW 16 Court and SW 132 Avenue.

Future Land Use Plan Designation: Residential (1 DU/Acre)

Zoning: A-1, Agricultural District

Existing Use: Single family dwelling with a swimming pool.

Proposed Use: same

Parcel Size: 0.8 acre (35,346 square feet)

Surrounding Uses:

North: Single Family Residential
South: Single Family Residential
East: Single Family Residential
West: Single Family Residential

**Surrounding Land
Use Plan Designation:**

Residential 1 DU/AC
Residential 1 DU/AC
Residential 1 DU/AC
Residential 1 DU/AC

Surrounding Zoning:

North: R-1, Estate Dwelling District
South: A-1, Agricultural District

East: A-1, Agricultural District
West: A-1, Agricultural District

ZONING HISTORY

Related Zoning History: None.

Previous Request on same property: Town Council approved plat request, P 1-8-86, "Leto Estates No.3" plat on March 2, 1986.

APPLICATION DETAILS

The applicant is requesting a variance to reduce the required side yard setback in the A-1, Agricultural District from 25 to 21.5 feet due to a series of errors made when the unenclosed swimming pool was constructed. According to the applicant, the original plans indicated a 21.5 foot side yard setback. The building official advised that the pool location did not comply with the minimum district setback, and allowed the permit runner to correct the dimension on the plan submitted. However, the correction was not carried over to the company's original building plans. Construction of the pool commenced, and the error was not found when the steel structure for the pool was inspected. The final inspection later revealed that the portion of the pool that contains the spa encroaches 3.5 feet into the minimum required 25 foot side yard. The applicant states that correcting the error would be a hardship, and is requesting a variance to reduce the minimum side yard setback to allow the pool to remain as constructed.

Applicable Codes and Ordinances

1. Section 12-81A of the Land Development Code, which requires a minimum side yard setback of 25 feet within the A-1, Agricultural District.
 2. Section 12-33(7) of the Land Development Code, which states where swimming pools may be located.
 3. Section 12-309 of the Land Development Code, review for variances.
-

Comprehensive Plan Considerations

Planning Area: The subject property falls within Planning Area 2. This area includes the westernmost section of the Town north of Orange Drive and south of SW 14 Street, and bound on the west by Interstate 75 and on the east by SW 100 Ave. The predominant existing and planned land use is single family residential at a density of one dwelling per acre.

Broward County Land Use Plan: The subject site falls within Flexibility Zone 100.

Applicable Goals, Objectives & Policies: None.

Staff Analysis

This variance has been requested because of alleged contractor error in determining the correct setback prior to submitting a plan, and subsequently failing to correct the error once it was found during the permitting process. The intent of the required setbacks is to keep

accessory structures greater than 150 square feet and pools out of required sideyards so that they are not visible from the street, and to provide adequate separation between adjacent properties. Staff finds that there are no special circumstances that apply to this property, as the pool and spa can be constructed to comply with all applicable setback requirements. Staff finds that granting of the variance is not necessary for the reasonable use of the land, and is not in harmony with the intent of the Land Development Code.

Findings of Fact

Variances:

Section 12-309(B)(1):

The following findings of facts apply to the variance request.

- (a) There is not a special circumstance or condition applying to the land or building for which the variance is sought, which circumstance or condition is peculiar to such land or building and does not apply generally to land or building in the same district, and that said circumstance or condition is such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or building for which the variance is sought. The alleged hardship is self-created by persons having an interest in the property.
- (b) The granting of the variance is not necessary for the reasonable use of the land or building, therefore the variance as requested is not the minimum variance that will accomplish this purpose.
- (c) Granting of the requested variance is not in harmony with the general purpose and intent of this chapter, and may be injurious to the neighborhood or otherwise detrimental to the public welfare.

Staff Recommendation

Recommendation: Based upon the above and the finding of facts in the negative, staff recommends denial, of petition V 4-1-01.

Planning & Zoning Board Recommendation

The Planning and Zoning Board recommended denial of the request at its June 13, 2001 meeting (Motion carried 5-0).

Exhibits

1. Justification letter, 2. Survey, 3. Land use map, 4. Subject site map, 5. Aerial

Prepared by: _____

Reviewed by: _____



Established 1936

April 18, 2001

Town of Davie Building Dept.

Re: Richard Adams
13101 SW 16th Court
Davie, FL 33325

VARIANCE APPLICATION ENCLOSED WITH FOLLOWING SUPPLEMENTAL
INFORMATION

Anthony and Sylvan Pools, Inc. applied for a building permit on the above residence. Our plans were submitted with a 21.5 foot measurement to water from side property line. Our permit runner was in the building department checking on the progress and a building official said there was a zoning set back problem. The official let our permit runner write out the 21.5 measurement and change it to 25 feet. The change was made on the survey copy and not on the original plans. No one in our company noticed the change to the survey and the pool was built to the plans that were submitted. The mistake was not caught at the steel inspection, therefore we passed the steel inspection. If the mistake was caught at that point it would have been easy to correct. The deck inspector failed the deck because he thought it was a 25-foot set back on the decking also.

We set an appointment to meet with Planning and Zoning to see if we could correct the problem. I met with Christopher M. Gratz in Zoning and he stated the only way to correct the problem was a variance. In going over the problem with Mr. Gratz there was confusion as to what the deck set back was. After going over the set back with other officials it was determined that the deck set back was 5 feet to property line not 25 feet, as the inspector failed the project for.

Mr. Gratz informed me the reason for the 25-foot set back is so the structure can not be seen from the street. We are asking for a variance of 3.5 feet on the pool set back. The owner is installing a vinyl fence like the enclosed photographs. No one will be able to see any part of the pool or decking from the street. No portion of the pool or spa is elevated at all. The pool and spa is 21.5' from the side property line. The decking is 13.0 feet from the side property line. The pool and spa are within the decking and the decking is also a permanent structure. It would be a financial hardship both for us and for the owner to correct the 3.5 foot mistake.

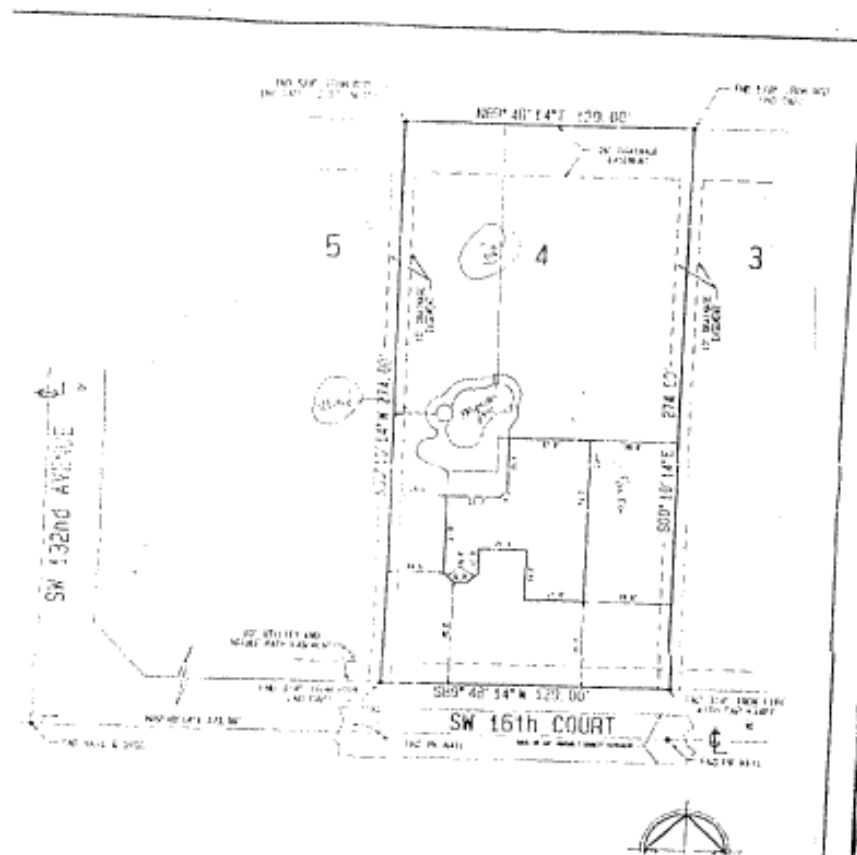
Thank you.

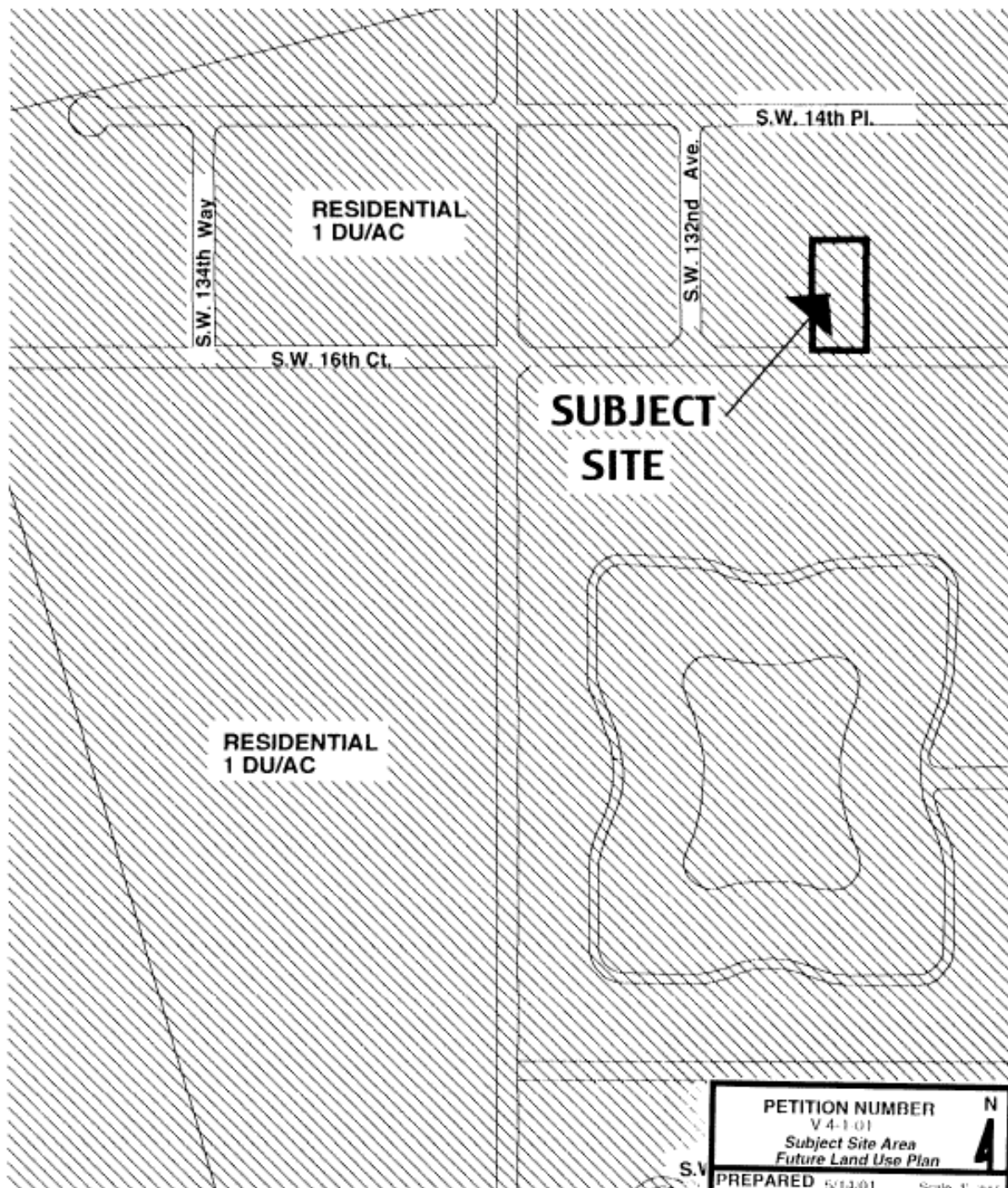
Sincerely,



Kenneth W. Leech
Manager Anthony & Sylvan Pools

925 University Dr.
Coral Springs, FL 33071
(954) 575-7946 • Fax (954) 575-8812

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PETITION NUMBER		N 4
V 4-1-01		
<i>Subject Site Area</i> <i>Future Land Use Plan</i>		
PREPARED 5/14/01		Scale: 1"=100'
BY THE PLANNING & ZONING DIVISION		

